IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 56 OF 2006

Shri Ashok Bampto Pagui,
residing near Uday Shop,
Pallolem, Canacona, Goa. ... Applicant

versus

1. M/s. Agencia Real Canacona
   Pvt. Ltd., a Company incorporated
   under the Companies Act, 1956,
   represented by Shri Prashant
   Shirodkar, Director, with office at
   3rd Floor, Mascarenhas Bldg.,
   Panaji, Goa.

2. State represented through the
   Public Prosecutor, High Court,
   Panaji, Goa. ... Respondents

Mr. Nitin Sardessai, Advocate for the Applicant.

Mr. J. Godinho, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 8TH JUNE, 2007.

ORAL JUDGMENT

This revision is filed by the accused and is directed against the Judgment dated 13-11-2006 of the learned Additional Sessions Judge, Panaji, by which the conviction and sentence imposed upon the accused under Section

138 of the Negotiable Instruments Act, 1881(Act, for short) has been confirmed.

2. The short point arising for consideration in this revision is whether a complaint filed by one of the Directors of the Complainant-Company was maintainable under Section 142(a) of the Act?

3. A few facts are required to be stated to dispose of this revision.

4. The parties hereto shall be referred to in the names as they appear in the cause title of the complaint.

5. The Complainant is a Company incorporated under the Companies Act, 1956 and the complaint on behalf of the Company was filed by Shri Prashant Shirodkar styling himself to be a Director of the said Complainant. The said complaint was filed with the allegation that the accused was in their employment and was in charge of their shop at Canacona. As per the Complainant, the accused had issued a cheque to the Complainant bearing No.032196 dated 4-3-1997 for a sum of Rs.71,850/- drawn on the Goa State Co-operative Bank Ltd., Canacona Branch, which when presented for payment was returned dishonoured for want of insufficient funds. The Complainant, therefore, sent the statutory notice to the accused dated 15-4-1997 which the accused received but failed to comply the same and therefore the Complainant filed the complaint on 15-5-2005 alleging that the accused committed an offence punishable under Section 138 of the said Act. At this very stage, it may be noted

that prior to the filing of this complaint on or about 23-5-1997, the said Director Shri Prashant Shirodkar had filed a complaint/FIR against the accused, which was produced by the accused in the course of the trial of the complaint, alleging that this very cheque was forged by the accused. There is no dispute that the said complaint was investigated by the Canacona Police and a charge-sheet is filed and the case is pending before the Court of J.M.F.C., Canacona. The subject cheque was later got produced through the Office of A.P.P. who generally has the original documents pertaining to the charge-sheet.

6. However, in support of the complaint, one Nishakant Pednekar was examined pursuant to a power of attorney given by Shri Deelip Shirodkar and Vinod Shirodkar, Managing Director and Director of the Complainant-Company, respectively. The said power of attorney which was produced on behalf of the Complainant at Exh.PW1/B indicated that the said Nishakant Pednekar was appointed to act for and on behalf of the Company pursuant to a Resolution dated 10-2-2003. A copy of the said Resolution was not filed along with the said power of attorney. Likewise, at the time of filing of the complaint by the said Director Shri Prashant Shirodkar, no Resolution nor any power of attorney was filed nor was there any statement made in the said complaint to the effect that the said Director Shri Prashant Shirodkar was authorized by the Complainant-Company to lodge the said complaint.

7. On behalf of the Complainant, the learned Counsel Mr. J. Godinho has placed reliance on various Judgments in support of the proposition that a

Director of a Company could file a complaint without there being a Resolution of the Board of Directors. Particular reference has been made to **M/s. M.M.T.C. Ltd. and another** v. **M/s. Medchl Chemicals & Pharma(P) Ltd. and another**(2002 ALL MR(Cri) 230(S.C.)) wherein the Apex Court after noticing that the complaint was filed in the name and on behalf of the Company held that the eligibility criterion prescribed by Section 142 that is that the complaint must be by the payee or the holder in due course was satisfied.

8. On the other hand, Mr. Nitin Sardessai, the learned Counsel on behalf of the accused, has also relied on several decisions and particularly on **Dale & Carrington Invt.(P) Ltd. and another** v. **P. K. Prathapan and others**((2005) 1 SCC 212) wherein the Apex Court held that the Company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by some Resolution of the Board of Directors of the company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, are taken by the Board of Directors. The Directors of Companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company.

9. The Apex Court in the case of **M/s. M. M. T. C. Ltd. and another** v. **M/s. Medchl Chemicals & Pharma(P) Ltd. and another**(supra) referred to its earlier decision in the case of **Vishwa Mitter** v. **O. P. Poddar**((1983) 4 SCC 701) wherein it was held that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case the only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion was satisfied as the complaint was in the name and on behalf of the appellant Company. The Apex Court also referred to its another decision in **Associated Cement Co. Ltd.** v. **Keshvanand**((1998) 1 SCC 687) wherein it was held that the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It was held that if a complaint is made in the name of a incorporeal person(like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It was held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in Court proceedings. It was also held that no Magistrate

shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It was held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

10. The Apex Court in **M/s. M.M.T.C. Ltd. and another v. M/s. Medchl Chemicals & Pharma(P) Ltd. and another**(supra) was dealing with the case at the initial stage of quashing the proceedings and considering that the Apex Court observed that even presuming that initially there was no authority, still the Company can, at any stage, rectify that defect. As far as the present case is concerned the defect has never been rectified by the Complainant Company by passing any resolution in favour of the said Prashant Shirodkar and authorizing him to file the complaint. There is no dispute that in this case it is the Complainant, a Company was the payee. On the contrary it can be seen from the power of attorney produced on behalf of the Complainant that if at all there was a resolution the same was in favour of the said Pednekar in whose favour the said power of attorney was given. Shri Prashant Shirodkar had none in his favour and none was produced. It is therefore obvious that the said Prashant

Shirodkar had no authorization from the Complainant Company to lodge the complaint. As stated by the Apex Court in **Dale & Carrington Invt.(P) Ltd. and another** v. **P. K. Prathapan and others**(supra) unless there was a resolution by the Board of Directors Shri Prashant Shirodkar had no power to lodge a complaint as an individual Director. It follows therefrom that no cognizance could have been taken on a complaint filed by the Director on behalf of the Company without a resolution to that effect and much less the accused convicted in such a complaint. Therefore, it could not be said that the complaint was filed by the payee or the holder in due course of the subject cheque as contemplated by clause(a) of Section 142 of the Act.

11. On behalf of the accused, reliance was placed on the case of **Sangli Bank Ltd.** v. **Kanishka Investments Pvt. Ltd. and others**(1999) (1) Bom.C.R. 660). That was a case when the defendants had specifically challenged the authority of Mr. Joshi to sign the plaint and of Mr. Redji to verify the plaint and it was held that it was incumbent on the plaintiffs to have proved each fact in that regard separately, independently and also in legally permissible manner. On facts this decision would be inapplicable to the facts of the case at hand.

12. Next, I will refer to various decisions cited on behalf of the Complainant by Mr. Godinho. The first is the case of **Shakthi Concrete Industries Ltd. and others** v. **M/s. Valuable Steels(India) Ltd.**(1998(2) Crimes 329). This case was also considered by the learned Single Judge of Madras

High Court at the stage of quashing of process issued. The Court after observing that a director or a manager in his individual capacity could not be said to be a payee or a holder in due course under Section 142(a) of the Act, found that as per the cause title and the averments, in the complaints the complainant company had approached the Court through some human agency, namely, Director of the Company, in preferring the complaints, as the Company has no soul, mind, body and limbs. It was therefore held that the Company being the complainant through its director was competent to file the complaint even without any authorization. However, it is interesting to note that the Madras High Court took note of two Judgments of Andhra Pradesh High Court reported in **Satish and Co.** v. **S. R. Traders and others**(1997(1) ALD(Cri.) 745) and **Swastic Coaters Pvt. Ltd.** v. **Deepak Brothers and another**(1997(1) ALD(Cri.) 370) and disagreed with the views held therein. In the first case, it was observed by the Andhra Pradesh High Court that:

> "Even if the cause title of the complaint describes the company as the complainant through the manager, the point for consideration would be whether such a complaint is competent without such authorization. According to me, even if the company is the complainant represented by its manager, such manager shall necessarily be an authorized manager so that the Magistrate can take cognizance of the offence".

13. In the second decision, it was observed that:

> "According to the cheque, the drawee is the company itself and it is the company who is the holder in due course and cause of action arises necessarily in favour of the company. A Director of the company cannot be said to be a holder in due course since the company itself is a legal person. Of course one of the Directors can present a complaint if there is a proper authorization in favour of such a Director. ... One of the Directors of the Company cannot be said to be a payee or holder in due course in terms of Section 142(a) of the Negotiable Instruments Act".

14. The case of **A Krishnan** v. **S. P. Kumar**(2001 CRI.L.J. 3494) was again considered at the stage of quashing of process issued. That was a case where the complaint was filed not only in the capacity of the Manager but also an authorization given by managing partner and therefore it was held that the complaint could not be quashed as invalid.

15. In the case of **M/s. Mohanlal Khemchand and others** v. **Pawan Kumar Mohanka and others**(1996 CRI. L.J. 2927) the complaint was filed by the Manager of the Company and it was noticed that there were averments in the complaint to the effect that the complainant was duly authorized by the said Company to make the complaint and the letter of authorization was also annexed to the complaint and therefore the Court held that there was no illegality

in the matter of filing the complaint.

16. The case of **Standard Chartered Bank** v. **Ravi Bhandari**(2002(4) Crimes 308) was decided on the basis of **M/s. M.M.T.C. Ltd. and another** v. **M/s. Medchl Chemicals and Pharma(P) Ltd. and another**(supra) again at the initial stage of quashing the complaint observing that the fact that the complaint was lodged by a Manager or other employee who had not been authorized by the Board of Directors to sign and file the complaint could not be a ground for quashing the complaint. In this context, it may be observed that the decisions rendered by the Andhra Pradesh High Court and referred to herein above were decisions rendered in appeal against the acquittal, and not at the initial stage of quashing the process.

17. In **Manimekalai** v. **Chapaldas Kalyanji Sanghvi**(1995 CRI. L. J. 1102) what was held was that a payee represented by the Power Agent can file a complaint for offence under Section 138 of the Act.

18. There are also other cases on the subject which can be seen from the decision of the Madras High Court reported in (2002 Company Cases Vol.108 page 25) which was the subject matter of appeal before the Apex Court in **M/s. M.M.T.C. Ltd. and another** v. **M/s. Medchl Chemicals & Pharma(P) Ltd. and another**(supra).

19. In **K. N. Sankaranarayanan** v. **Shree Consultants(1994**(80) Company Cases 558) it was held that when a Director institutes a petition on behalf of a company without proof or authorization, the invalidity cannot be cured by a later ratification and therefore, such a petition is not maintainable. In **Satish & Co.** v. **S. R. Traders and others**(1997(4) ALL MR(JOURNAL) 58) it was held that the complaint filed by the company represented by its Manager, who is not authorized to file the complaint, is not maintainable. Subsequent authorization in favour of the Manager will not revive the prosecution. However, I must hasten and add that the last observations as regards ratification or subsequent authorization will have now to give way to what the Apex Court has held in **M/s. M. M. T. C. Ltd. and another** v**. M/s. Medchl Chemicals & Pharma(P) Ltd. and another**(supra). However, it is nobody's case that till the Judgment was recorded by the trial Court that any such authorization or ratification was given in favour of the said Prashant Shirodkar to file the complaint.

20. In **Ruby Leather Exports** v. **K. Venu**(1995 Vol.82 Company Cases 776)(Madras) the complaint was filed by a Manager, and as the records did not disclose any authorization. It was held that taking cognizance of the complaint was barred under Section 142(a) of the Act. In **Nibro Ltd.** v. **National Insurance Co. Ltd.**(1991 Vol.70 Company Cases 388) it was held that "... the powers of a company in respect of a particular matter are to be exercised by the company in general meeting, in all other cases the Board of Directors are entitled to exercise all its powers... . It is true that ordinarily the Court will not non-suit a person on account of technicalities. However, the question of authority

to institute a suit on behalf of a company is not a technical matter... . It has far-reaching effects. Order 29, Rule 1 of C.P.C., 1908 does not authorize persons mentioned therein to institute suits on behalf of a Corporation. It only authorizes them to sign and verify the pleadings on behalf of the Corporation. Thus, unless a power to institute a suit is specifically conferred on a particular Director, he has no authority to institute a suit on behalf of the Company. Such power can be conferred by the Board of Directors only by passing a resolution in that regard".

21. A Director, as an individual Director, has no power to act on behalf of the company. He is only one of a body of Directors called the Board of Directors and alone he has no power except such as may be delegated to him by the Board of Directors or given to him by the articles of association of a company. In the case at hand, the complaint was filed by one of the Directors and as already stated by a Director who had initially complained to the Police that the subject cheque was forged by the accused, and, without any resolution of the company or any authorization from the Board of Directors. The view held by me is consistent with the views expressed in the decisions referred to herein above, namely, those of the Madras High Court in **Ruby Leather Exports v. K. Venu**(supra), Andhra Pradesh High Court and Delhi High Court which is now confirmed by the view held by the Apex Court in **Dale and Carrington Invt.(P) Ltd. and another** v. **P. K. Prathapan and others**(supra) and therefore I hold that the complaint in this case was not filed by the company as required under clause (a) of Section 142 of the Act and on such a complaint no process could have been issued much less a conviction imposed. The said Shri Prashant

Shirodkar could not have filed the same merely in his capacity of a Director. He had to file the same only with authorization from the Board of Directors. As already stated, prima facie, it appears that such authorization was issued by the complainant company in favour of Shri Pednekar as can be seen from the copy of power of attorney produced.

22. As a result, the revision petition deserves to succeed. Consequently, the Judgments of both the Courts below are hereby set aside and the accused acquitted under Section 138 of the Negotiable Instruments Act, 1881. The sum of Rs.71,850/- deposited pursuant to Order dated 15-11-2006 and Rs.54,000/- deposited pursuant to Order dated 27-4-2007 shall be refunded to the accused after a period of four weeks along with accrued interest, if any. The Bail Bonds of the accused shall stand cancelled.

N. A. BRITTO, J.

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